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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

FLAGSHIP WEST, LLC, a California  
limited liability company, MARVIN G.  
REICHE, and KATHLEEN REICHE,

Plaintiffs,

v.

EXCEL REALTY PARTNERS, L.P., a  
Delaware limited partnership, NEW PLAN  
EXCEL REALTY TRUST, INC., a  
Maryland corporation, et al,

Defendants.

Case No. 1:02-CV-05200 OWW

**STIPULATED ORDER  
APPROVING DEPOSIT OF  
LETTER OF CREDIT IN LIEU OF  
SUPERSEDEAS BOND AND  
STAYING ENFORCEMENT  
[FED.R.CIV.P. 62(d)]**

On June 26, 2007, EXCEL REALTY PARTNERS, L.P., ("EXCEL"), appealed the Judgment of this Court entered on December 14, 2006 and the Amended Judgment entered on June 15, 2007 (collectively "Amended Judgment"). On July 16, 2007, EXCEL sought a stay of execution on and enforcement of the Amended Judgment pending appeal and sought approval to

**FILED**

AUG 29 2007

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_  
DEPUTY CLERK

1 deliver to Plaintiffs' counsel a Letter of Credit in the sum of \$3,775,000 in lieu of a supersedeas  
2 bond.

3  
4 Having duly considered the matter, IT IS ORDERED that:

5 1. EXCEL shall deliver to Plaintiffs' counsel an irrevocable letter of credit from  
6 Bank of America, N.A. in the amount of \$3,775,000.00 ("Letter of Credit");

7 2. The Letter of Credit is approved in lieu and instead of the supersedeas bond  
8 referenced in Rule 62(d) of the Federal Rules of Civil Procedure to stay execution and  
9 enforcement of the Amended Judgment;

10 3. Upon delivery of the original Letter of Credit to Plaintiffs' counsel, any  
11 proceedings to execute on or enforce the Amended Judgment are stayed pending the  
12 determination of EXCEL's appeal from the Amended Judgment;

13 4. Plaintiffs may draw on the Letter of Credit in the amount of the final judgment,  
14 any interest accruing on the final judgment at the rate of 4.98% per annum, from and after June  
15 15, 2007, to be compounded annually, plus any attorneys' fees and costs awarded to the Plaintiffs,  
thirty (30) days following:

16 a. Entry of final judgment by The United States Court of Appeals for the  
17 Ninth Circuit ("Ninth Circuit") affirming the Amended Judgment in full or in part without  
18 remand;

19 b. Entry of final judgment by the Ninth Circuit modifying the Amended  
Judgment;

20 c. Dismissal of all appeals by the Ninth Circuit, either voluntarily or  
21 involuntarily with no appeal thereafter filed; or

22 d. Remand by the Ninth Circuit to the United States District Court for the  
23 Eastern District of California and entry of final judgment therein with no appeal thereafter filed;

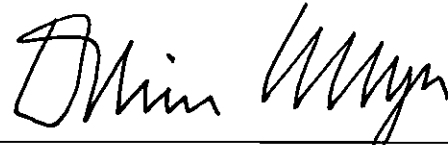
24 5. Pursuant to the terms of the Letter of Credit, if Bank of America, N.A. intends to  
25 cancel or not renew the Letter of Credit, Plaintiffs shall receive at least thirty days notice of such  
26 intention prior to cancellation or non-renewal, during which time EXCEL may obtain a substitute  
27 letter of credit or a supersedeas bond, or a cash bond on the same terms as the Letter of Credit and  
28 for an amount no less than the Letter of Credit. Upon cancellation or non-renewal of the Letter of  
Credit, the stay of execution hereby entered will be vacated, unless EXCEL has obtained

1 substitute security, as set forth in this paragraph.

2 6. If the Amended Judgment is reversed in full on appeal, or if EXCEL fully satisfies  
3 and obtains a satisfaction of judgment from Plaintiffs, the Letter of Credit shall be returned to  
4 EXCEL.

5 IT IS SO ORDERED.

6  
7 By:



UNITED STATES DISTRICT JUDGE

8 Dated:

8-29-07